

**Testimony of Lorray S.C. Brown  
On Behalf of the Michigan Advocacy Project (MAP)**

**House Committee on Banking and Financial Services  
Substitute for House Bill 4542  
Substitute for House Bill 4543  
Substitute for House Bill 4544**

Chairman Knollenberg and members of the House Committee on Banking and Financial Services, thank you for the opportunity to testify regarding the proposed legislation to extend the 90-day pre-foreclosure law. I am Lorray Brown, the statewide foreclosure prevention specialist at Michigan Poverty Law Program.<sup>1</sup> Michigan Poverty Law Program is the statewide back-up center for legal services programs. I am here today on behalf of the Michigan Advocacy Project. The Michigan Advocacy Project (MAP) is a joint project between the Michigan League for Human Services (MLHS) and the Michigan Poverty Law Program (MPLP). MAP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

I want to take this time to acknowledge the time and effort this Committee has given to this issue. I especially appreciate the personal time that Chairman Knollenberg has invested in discussions in the workgroup and meeting with individuals around this issue. We all know that the foreclosure crisis is nowhere near the end. It is predicted that foreclosures will increase in 2012. The 90-day pre-foreclosure negotiation law is therefore necessary to give homeowners an opportunity to avoid foreclosure. The Substitutes for House Bills 4542, 4543 and 4544 have retained the intent and goals of the 90-day law as enacted in 2009. If enacted, not only will this avoid foreclosures, thus keeping homeowners in their homes, but this will also stabilize neighborhoods. The Michigan Advocacy Project therefore supports the Substitutes for House Bills 4542, 4543 and 4544. I do however would like to address a few concerns.

**Substitute for House Bill 4542 – The Designate Agent Is An Individual, Department, or Unit Authorized to Facilitate Negotiations and Attend Meetings**

It is unclear whether the designated agent will have authority to modify the loans or someone with authority to modify the loans will attend these meetings. The intent of the 90-day law was to ensure that there would be someone at the meetings who had the authority to enter into an agreement with the homeowner. As a result, the 90-day law specifically provided that the designated agent is someone with the authority to modify the terms of the loan. The intent was

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<sup>1</sup> As the statewide foreclosure specialist, I run the Michigan Foreclosure Prevention Project, a project of the Michigan Poverty Law Program. The Michigan Foreclosure Prevention Project is a collaborative statewide project involving all the major legal services programs. The goal of the Project is to provide comprehensive and coordinated foreclosure prevention advocacy throughout the state by 1) providing direct legal representation to homeowners facing foreclosure, 2) providing support to housing counseling organizations, 3) coordinating policy advocacy on a statewide basis, and 4) providing training and technical support.

to have someone at the meeting who could make a decision at the meeting. I note here that Sub HB 4543 does mention that the person to contact has authority to make agreements. But given Sub HB 4542 it is unclear what role the designated agent will now have. It is important that this confusion be cleared up.

#### **Substitute for House Bill 4542 – Provides that the Borrower Will Be Liable for Damages Incurred During the Redemption Period**

While I agree that homeowners who intentionally destroy property should be held responsible, there needs to be a more comprehensive approach that will address not only the homeowners' responsibility but the lenders' responsibility and neighborhood blight.

As written, the Bill would make borrowers liable for something that their children broke. The purchaser at the sale whether it is the lender or a third party, will have no basis for assessing the condition before or after the redemption period started, so causation will be speculative at best. Moreover, these may end up being default judgments in many cases. Perhaps the buyer or lender should have some right to seek an injunction to restrain waste if they can produce evidence to a judge that the tenant is doing serious damage to the property during the redemption period. This is a pretty standard remedy and the buyer or lender should be limited to that. To address the lenders' responsibility and blight, perhaps the law could establish a committee that would develop a set of guidelines for lenders to care for REO properties.

#### **Substitute for House Bill 4543 – the Diminished Role of the Housing Counselor**

I am not sure what the rationale is for the diminished role of the housing counselors. However, I wanted to take this time to point out the valuable contribution the housing counselors have made to this process. They make sure that the homeowners get the documents submitted in a timely manner. Some homeowners feel helpless through this process and having the housing counselor assisting them at the onset is significant.

#### **Substitute for House Bill 4543 – the Requirement that Persons Who Are Not Attorneys or not on the MSHDA Housing Counselors List Cannot Perform the Duties under Sections 3205A to 3205C.**

I appreciate this provision as an effort to combat the loan modification scammers preying on vulnerable homeowners. With the inclusion of "attorney", this section might inadvertently exempt some loan modification scammers. It is my experience that some loan modification scammers are actually attorneys whose primary businesses are loan modification consultants.

I think we need a clearer definition to ensure that we don't inadvertently exempt some loan modification scammers and also don't inadvertently exclude legitimate persons such as legal services attorneys representing homeowners in the 90-day process and who are not on the MSHDA list. Below are suggested changes:

Persons who shall perform the duties of housing counselor under sections 3205A to 3205C are 1) persons on the list of housing counselors developed by the Michigan state housing development authority and 2) Attorneys who are engaged in the practice of law, who are licensed to practice law in Michigan and who are representing homeowners to avoid foreclosure.

Thank you.

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